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Section II: REMARKS

It is respectfully requested that the changes as noted above in Section I be made to the present application.

It is initially noted that the "Office Action Summary" sheet incorrectly indicates that only 27 claims are pending in the present application when, in fact, 29 claims are pending and have been examined.

From the above-referenced Office Action, which was mailed on 7/1/2004, claims 1, 12 and 23 were rejected under 35 USC 112 because there was no antecedent basis for the term "user". By this amendment, appropriate language has been added to the noted claims to provide a proper antecedent basis for the term "user" thereby obviating the stated rejection.

Next, claims 2, 4, 13, 15, 24 and 26 were rejected under 35 USC 112 because of the use of the term "more favorable". While that rejection is respectfully traversed, by this amendment the term "more favorable" has been changed to the positive recitation "indicative of" thereby obviating the stated rejection.

Next, claims 7, 18 and 28 were rejected under 35 USC 112 because of the use of the term "favorable total". While that rejection is respectfully traversed, by this amendment the term "favorable total" has been changed to the positive recitation "predetermined threshold" thereby obviating the stated rejection.

As herein amended, claims 1, 2, 4, 7, 12, 13, 15, 18, 23, 24, 26 and 28 are believed to be allowable under 35 USC 112.

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Next, claims 1-7, 12-18 and 23-28 were rejected under 35 USC 103(a) as being unpatentable over D'Alessandro (Patent 6,556,974) in view of Hameluck et al (U.S. Patent 6,237,138), and claims 8-11, 19-22 and 29 were rejected under 35 USC 103(a) as being unpatentable over D'Alessandro in view of Hameluck and still further view of Yamasaki (U.S. Patent 5,699,517). Those rejections are respectfully traversed. However, in order to further the prosecution of the present application, and without waiving any of applicant's rights to argue the allowability of the originally presented claims in a subsequent appeal or other proceeding in the event that the Examiner does not concur that the present amendment places the application in condition for allowance, applicant has herein amended the claims for clarification purposes to place them in better condition for allowance or appeal.

D'Alessandro discloses a system for providing assessments of an organization's performance based on predetermined criteria. Individuals to be evaluated log-on to a system and answer a plurality of questions relating to various aspects of the business entity's operations. The data is stored in a database and subsequently analyzed by a survey administrator for evaluation and forecasting of the business entity's performance. More simply stated, D'Alessandro illustrates a process by which survey data is gathered and saved.

By contrast, the present invention provides, *inter alia*, a means for **notifying a user that an upgrade version of a base application is available for testing**. There is nothing in D'Alessandro that corresponds to this limitation.

The present invention further provides a means for enabling the user to test the upgrade version **with the user's data at a**

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network address different from a network address of the base application. There is nothing in D'Alessandro that corresponds to this limitation.

The present invention further displays a questionnaire regarding test **results of said user from testing the upgrade application.** There is nothing in D'Alessandro that corresponds to this limitation.

Further, the present invention provides that input received from users of the upgrade version are assigned quantitative scores and that such scores are automatically evaluated **to provide an indication of acceptability of the upgrade version of the base application.** There is nothing in D'Alessandro that corresponds to this limitation.

Among other distinctions, the above noted limitations are neither disclosed nor discussed by D'Alessandro. Further, there is no upgrade application testing discussed in D'Alessandro and no need for upgrade testing. D'Alessandro merely shows taking survey data online and saving it with no mention of or need to upgrade any user application.

Hameluck discloses a system in which a critical event is identified by the user of an application, and the screen activity for a period of time prior to the critical event is captured for evaluation of the application. Like D'Alessandro, there is no mention or suggestion in Hameluck of the upgrade version availability notification to a user, or the testing of the upgrade version at a different address from the base application, or the quantification of input to determine the acceptability of the upgrade application.

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In view of the above noted distinctions, all of the independent claims currently under consideration, i.e. independent claims 1, 12 and 23, have herein been clarified to recite that the user is notified of the availability for testing of an upgrade version of a base application at a site different from a network address of the base application and enabled to access the upgrade site to test the upgrade version with user's data for the base application. As noted above, neither D'Alessandro nor Hameluck teach, disclose or even suggest applicant's recited processing methodology and therefore it is submitted that claims 1, 12 and 23 are allowable under 35 USC 103(a) over D'Alessandro in view of Hameluck. With the above noted clarifications, it is further submitted that since claims 2-7, 13-18 and 24-28 ultimately depend from one of the amended independent claims, and include even further limitations as specified in the individual claims, that the dependent claims 1-7, 12-18 and 23-28 are allowable under 35 USC 103(a) over D'Alessandro in view of Hameluck.

Next, claims 8-11, 19-22 and 29 were rejected under 35 USC 103(a) as being unpatentable over D'Alessandro in view of Hameluck and still further view of Yamasaki (U.S. Patent 5,699,517). It is noted that claims 8-11, 19-22 and 29 are dependent claims which depend from one of the amended independent claims. Yamasaki, like D'Alessandro and Hameluck, does not teach, disclose or even suggest applicant's total processing methodology as set forth in the amended independent claims. Instead, Yamasaki discloses a system to search and provide an optimal program satisfying a user-requested specification from among various programs stored in processing equipment. This is clearly an application and environment which is quite different from applicant's focus. In this regard, applicant respectfully but specifically traverses the taking of "Official Notice" by the Examiner in discussing, *inter alia*, the rejections of claims 9, 10 and 11. Such "Official

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Notice" cannot be accepted by the applicant since it is not shown to be in the same context or environment as the applicant's disclosure. Yamasaki involves no application testing at all much less, *inter alia*, notifying and enabling upgrade version testing and providing user qualitative input after testing with regard to the upgrade version as is accomplished with the present invention. As noted earlier, neither D'Alessandro nor Hameluck teach, disclose or even suggest applicant's recited processing methodology as recited in the amended independent claims and that therefore claims 1, 12 and 23 are allowable under 35 USC 103(a) over D'Alessandro in view of Hameluck. It is submitted that since Yamasaki also falls short of disclosing or even suggesting the recited elements and relationships of the **amended** independent claims, that claims 8-11, 9-22 and 29 are also clearly allowable under 35 USC 103(a) over D'Alessandro in view of Hameluck and even in still further view of Yamasaki.

It should be noted that applicant is claiming only that the **total combination** of elements and relationships as recited in the claims as herein amended, is neither anticipated nor rendered obvious by the cited references. Applicant is aware the individual elements of any claim can be isolated, and, when standing alone, those elements can be found in existing references. The similarity of various pieces and parts of the references as noted on pages 3-8 of the above-identified Office Action has been noted but it is believed that **there is no common environment or nexus among the references to even suggest the combining of the various references in attempting to assemble the total combination of elements and relationships as recited in the claims as herein amended.** Where there is no teaching or suggestion in any of the references for the **specific total combination** of elements and relationships among those elements, as claimed by an applicant, it is submitted to be inappropriate

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to search the prior art using applicant's own disclosure as a recipe, to find piecemeal elements in prior art references for individual claimed elements, and then to combine those references in a manner disclosed only by the applicant in order to reject applicant's own claims.

Thus, it is submitted that claims 1-27, as herein presented, are believed to be in condition for allowance, an early notice of which is hereby requested. If any outstanding issues remain, or if the Examiner discovers any new applicable art or has any further suggestions for expediting the allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below. The Examiner's attention to this matter is greatly appreciated.

Respectfully submitted,

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